

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

CORTEZ BANKS,)
)
Plaintiff,)
)
v.)
)
C. O. KEVIN BARNES, *et al.*,) No. 2:13-cv-0119
)
Defendants.)

ORDER

Pending before the Court is a Report and Recommendation (“R & R”) of the Magistrate Judge, recommending that this action be dismissed without prejudice. Specifically, the R & R provides,

[Under] Rule 4(m) a plaintiff [has] 120 days within which to obtain service of process and specifically provides that the Court must dismiss the action without prejudice after notice to the plaintiff, or order that service be made within a specific time. The Court has the authority for good cause shown to extend the time of service for an appropriate period.

In this case the Plaintiff was specifically notified of the requirements of Rule 4(m) on January 8, 2014 (Docket Entry 8). Since that time the Plaintiff has taken no action to provide the Court with a better address or to ask the Court for additional time to secure a better address.

A prisoner does not have the ability to serve process personally and is dependent upon the Marshals Service to accomplish that service. The Magistrate Judge therefore does not believe that the 120 days should start to run until the Plaintiff returned the service packet to the Court and the Clerk issued a summons on December 13, 2013 (Docket Entry 6).

As of the date of the report and recommendation, 120 days has now run and this case is subject to dismissal for failure to obtain service of process within that time or to show good cause why the time should be extended.

(Docket Entry No. 11). No objections were made to the R & R.¹

Where no objections are made to the R & R, “[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b). Having thoroughly reviewed the record in this case and the applicable law in accordance with Rule 72(b), the Court will accept the R & R.

Accordingly, the Court hereby rules as follows:

- (1) The Report and Recommendation (Docket Entry No. 11) is hereby ACCEPTED and APPROVED; and
- (2) Plaintiff Cortez Banks’ Complaint is hereby DISMISSED WITHOUT PREJUDICE.

The Clerk is directed to enter Judgment in a separate document in accordance with Federal Rule of Civil Procedure 58.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE

¹ The Court notes that Plaintiff Banks was sent the R & R, but it was returned as “not deliverable as addressed” and “not here.” *See* (Docket Entry Nos. 13 and 14). Since Plaintiff has failed to notify the Court of his current address, his whereabouts are unknown.